

Letter of Findings: 04-20170251
Sales Tax
For the Year 2015

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual did not provide sufficient documentation to show that the forklift had an immediate effect on the direct production of crops.

ISSUE

I. Sales Tax - Agricultural Exemptions.

Authority: IC § 6-2.5-1-1 *et seq.*; IC § 6-2.5-3-4; IC § 6-2.5-5-2; IC § 6-8.1-5-1; *Indiana Dept. of State Rev. v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282 (Ind. Tax Ct. 1999); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-5-1](#); [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-6](#).

Taxpayer protests the Department's assessment.

STATEMENT OF FACTS

Taxpayer, an Indiana resident, purchased a forklift in February 2015. Taxpayer was assessed sales tax on the purchase of the forklift by the Indiana Department of Revenue ("Department"). Taxpayer timely protested the assessment. A phone hearing was held. This Letter of finding ensues. Additional facts will be provided as necessary.

I. Sales Tax - Agricultural Exemptions.

DISCUSSION

The Department determined Taxpayer's purchase of a forklift was taxable as not directly used in direct production of agricultural commodities. Taxpayer, to the contrary, claimed that he is entitled to the agricultural exemption outlined in IC § 6-2.5-5-2.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Rev. v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App.

1988). The exemption to which Taxpayer aspires, IC § 6-2.5-5-2, like all tax exemption provisions, is strictly construed against exemption from the tax. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999). Therefore, in order for Taxpayer to prevail on the different issues it raises, Taxpayer must demonstrate that the initial assessment was "wrong" and that it is instead entitled to a sales tax exemption which is "strictly construed" in favor of taxation.

Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 *et seq.* Generally, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable. [45 IAC 2.2-5-6\(a\)](#). An exemption from use tax is granted for transactions where the gross retail tax ("sales tax") was paid at the time of purchase pursuant to IC § 6-2.5-3-4. There are also additional exemptions from sales tax and use tax. A statute which provides a tax exemption, however, is strictly construed against the taxpayer. *Indiana Dep't of State Revenue v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974).

IC § 6-2.5-5-2 (2015) states:

- (a) Transactions involving **agricultural machinery, tools, and equipment** are exempt from the state gross retail tax if the person acquiring that property acquires it for his **direct use in the direct production**, extraction, harvesting, or processing **of agricultural commodities** . . .
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
- (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which the person sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste. **(Emphasis added)**.

[45 IAC 2.2-5-1\(a\)](#) further provides:

Definitions. "Farmers" means only those persons **occupationally engaged in producing food or agricultural commodities for sale or for further use in producing food or such commodities for sale**. These terms are limited to those persons, partnerships, or corporations regularly engaged in the commercial production for sale of vegetables, fruits, crops, livestock, poultry, and other food or agricultural products. Only those persons, partnerships, or corporations whose intention it is to produce such food or commodities at a profit and not those persons who intend to engage in such production for pleasure or as a hobby qualify within this definition.

"Farming" means engaging in the commercial production of food or agricultural commodities as a farmer. **"To be directly used by the farmer in the direct production of food or agricultural commodities" requires that the property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or an agricultural commodity. (Emphasis added).**

[45 IAC 2.2-5-4](#), in relevant part, further illustrates:

- (c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

- Fences, posts, gates, and fencing materials.
- Water supply systems for personal use.
- Drains.
- Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.
- Ditchers and graders.
- Paints and brushes.
- Refrigerators, freezers, and other household appliances.

- Garden and lawn equipment, parts, and supplies.
- Electricity for lighting and other non-agricultural use.
- Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.
- Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.
- Pumps.
- All saws.
- All tools, including forks, shovels, hoes, welders, power tools, and hand tools.
- Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.
- Plumbing, electrical supplies, and accessories, pumps.
- Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.
- Food for non-exempt horses, ponies, etc.
- Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.
- Field tile or culverts.
- Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).
- Any replacement parts or accessories for the above items. (Bullets added).

(d) Each of the following items is considered **exempt from the sales tax ONLY** when the purchaser is occupationally engaged in agricultural production and **uses** the items **directly in direct production of agricultural products**.

EXEMPT TRANSACTIONS

- (1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.
- (2) Feed and medicines sold for livestock and poultry described in Item (1).
- (3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.
- (4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.
- (5) Milking machines, filters, strainers, and aerators.
- (6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.
- (7) Grease and repair parts necessary for the servicing of exempt equipment.
- (8) Containers used to package farm products for sale.
- (9) Equipment designed to haul animal waste.
- (10) Equipment such as needles, syringes, and vaccine pumps.

(e) **The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic] tax. It must be directly used by the farmer in the direct production of agricultural products.** The property in question must have an **immediate effect on the article being produced**. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. **The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt. (Emphasis added).**

During the hearing, Taxpayer explained that he used the forklift to move boxes of seed around. Also, he used the forklift to load the planter. Taxpayer explained that he did not use the forklift for any other purpose. Taxpayer stated that the forklift is necessary for him to move the large, heavy seed boxes and enables him to load the planter. However as described in [45 IAC 2.2-5-4](#)(e), the use of the forklift may be a practical necessity for Taxpayer, but does not mean that it is automatically exempt. In this case, while the planter was directly used in the direct production of Taxpayer's crops, the forklift was a step removed from the direct production of those crops, as required by IC § 6-2.5-5-2. Taxpayer did not provide sufficient documentation showing that the forklift was directly used in direct production of crops, nor was the use of the forklift an essential and integral part of an integrated process which produced the crops.

FINDING

Taxpayer's protest is denied.

